

Wage and Hour Division, Labor

§ 579.1

(3) The previous history of violations, including whether the employer is subject to injunction against violations of the Act;

(4) The employer's commitment to future compliance;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

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AUTHORITY: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 09-2009 (Nov. 16, 2009); Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division, 74 FR 58836; 104 Stat. 890 (28 U.S.C. 2461 note), as amended by 110 Stat. 1321-373 and 112 Stat. 3293.

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, the Compactor and Balers Safety Standards Modernization Act of 1996, and the Genetic Information Nondiscrimination Act of 2008, provides for the imposition of civil money penalties in the following manner:

(1)(i) Any person who violates the provisions of sections 212 or 213(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed:

(A) \$11,000 for each employee who was the subject of such a violation; or

(B) \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be

doubled where the violation is a repeated or willful violation.

(ii) For purposes of paragraph (a)(1)(i)(B) of this section, the term "serious injury" means:

(A) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(B) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(C) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 of the FLSA, relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.

(3) In determining the amount of any penalty under section 216(e) of the FLSA, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under section 216(e) of the FLSA, when finally determined, may be:

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 215(a)(4) or a repeated or willful violation of section 215(a)(2) of the FLSA, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under section 216(e) of the FLSA shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section

554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of the FLSA, sums collected as penalties pursuant to section 216(e) of the FLSA shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 202 of the Act entitled “An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes” (29 U.S.C. 9a). Civil penalties collected for violations of section 212 shall be deposited in the general fund of the Treasury.

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)), requires that Federal agencies periodically adjust their civil money penalties for inflation according to a specified cost-of-living formula. This law requires each agency to make an initial inflationary adjustment for all covered civil money penalties, and to make further inflationary adjustments at least once every four years thereafter. Any increase in the civil money penalty amount will apply only to violations that occur after the date the increase takes effect.

(c) This part explains our procedures for issuing a notice of civil penalty to an employer that has violated section 12 or section 13(c)(5) of the Act, or any regulation issued under those sections; describes the types of violations for which we may impose a penalty and the factors we will consider in assessing the amount of the penalty; outlines the procedure for a person charged with violations to file an exception to the determination that the violations occurred; and summarizes the methods we will follow for collecting and recovering the penalty.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991; 66 FR 63503, Dec. 7, 2001; 69 FR 75405, Dec. 16, 2004; 75 FR 28460, May 20, 2010]

§ 579.2 Definitions.

As used in this part and part 580 of this chapter:

Act means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*).

Administrative law judge means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554–557.

Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part and part 580 of this chapter.

Agency has the meaning given it by 5 U.S.C. 551.

Chief Administrative Law Judge means the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001–8002.

Department means the U.S. Department of Labor.

Person includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

Repeated violations has two components. An employer’s violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *repeated* for purposes of this section:

(1) Where the employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or,

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, unless an appeal therefrom which has been timely filed is pending before a court or